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Daily Labor Report

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SECTION: CURRENT DEVELOPMENTS SECTION.

TITLE: WASHINGTON STATE SUPREME COURT WILL REVIEW SECONDHAND SMOKE CASE.

TEXT:

OLYMPIA, Wash. (By a BNA Special Correspondent) -- The Washington State Supreme Court will review the case of a woman who sued her employer for negligence for allowing smoking in the workplace, which she said caused her chronic pulmonary disease.

The Washington State Court of Appeals ruled Dec. 8, 1986, that McCarthy could sue her employer, The Department of Social and Health Services, for negligence in exposing her to the smoke of co-workers and that her case could not be preempted by the state Industrial Insurance Act (1987 DLR 5: A-3).

The appeals court ruling was the first of its kind in the nation, said Carolyn McVicker, director of marketing for the Smoking Policy Institute, a nonprofit corporation which assists corporations in resolving problems created by smoking in the workplace.

McCarthy worked for the state agency for 10 years, then quit in December 1980 when her employer refused to provide her with a smoke-free office environment. She developed obstructive lung disease and sought industrial insurance benefits for her condition. The state Department of Labor and Industries denied her claim, but she appealed the decision to the Board of Industrial Insurance Appeals. The board upheld the denial of benefits, concluding her disease was not the result of an industrial injury nor did it constitute an occupational disease under the Industrial Insurance Act. But the appeals court ruled that McCarthy had a common law action for negligence.

(McCarthy v. State of Washington Department of Social and Health Services; Wash SupCt, No. 535485, review granted March 31, 1987.)

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